IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY EIGHTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

HON'BLE SMT JUSTICE T.MEENA KUMARI

WRIT PETITION NO : 20316 of 1995

Between:

1 R. Murali (died) s/o. Rangarajaiah, r/o Malkajgiri (v) Rangareddy Dist.
2 Smt Lingamma w/o Rangarajaiah, r/o Malkajgiri (v)

Rangareddy Dist.
3 Vijaya Kumar s/o. Rangarajaiah, r/o Malkajgiri (v) Rangareddy Dist.
4 Vijayalakshmi w/o Laxminarayana, r/o Malkajgiri (v) Rangareddy Dist.
5 Suseela w/o Venkatesh, r/o Malkajgiri (v) Rangareddy Dist.
6 Bharati Bai w/o Mohan Rao, r/o Malkajgiri (v) Rangareddy Dist.
7 Padmavathi w/o Dattatreya, r/o Malkajgiri (v) Rangareddy Dist.
8 Lingaiah s/o. Rangarajaiah, r/o Malkajgiri (v) Rangareddy Dist.

9 Smt Uma, w/o late R Murali, aged 36 years, Malkajgiri,

Ranga Reddy Dist.

(Petitioner No.9 brought on record as LR of deceased petitioner No.1 as per Court orders dt. 28-4-2005 in WPMP No.3249 of 2005.)

..... PETITIONERS

AND

1 The Joint Collector, Rangareddy District, Hyderabad.
2 The Revenue Divisional Officer, Chevella Division, Rangareddy District at Domalguda Hyderabad.
3 S. Ramulu s/o Venkataiah, r/o 8-110, Malkajigiri, Rangareddy District.
4 M. Narasimha s/o Sundaraiah, r/o 5-111, Malkajigiri,

Rangareddy District.

5 M. Sathaiah s/o Sundaraiah, r/o 5-111, Malkajigiri,

Rangareddy District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to Issue a writ of Mandamus or any other appropriate writ or writs, order or direction, declaring and setting aside the orders dt. 31.1.1994 issued in Proc No B2/7418/90 on the file of the first respondent and the order dt 18.7.1990 passed in Proc No L/4862/88 on the file of the 2nd respondent, as illegal, arbitrary and without jurisdiction, by directing the respondents 1 and 2 herein to grant co-parcenery rights certificate in favour of the petitioners herein with regard to land bearing Sy Nos 54, admeasuring (1) Acre (14) guntas situated at Malkajgiri (v) & Mandal, Rangareddy District, award costs;

Counsel for the Petitioner: MR.K.RAGHUVEER REDDY
Counsel for the Respondent Nos.1 & 2: GP FOR REVENUE
Counsel for the Respondent Nos. 3 to 5 : Mr P. SRINIVAS

The Court made the following :

ORDER:

This writ petition has been filed seeking a direction to the respondents to declare the orders passed in Proceedings No.B2/7418/90 dated 31-1-1994 on the file of the 1st respondent and the Proceedings No.L/4862/88 dated 18-7-1990 on the file of the 2nd respondent as illegal and arbitrary.

The facts of the case in nutshell are as follows:

It is the case of the petitioners that Sonnaila Ramulu was the Inamdar of Sy.No.54, admeasuring Ac. 1.14 guntas of chowta inam land situated at Malkajgiri village and after his death, his widow mortgaged the said land on 1-7-1954 in favour of the father of petitioners 1, 3 to 8 and the husband of the 2nd petitioner and delivered possession also. Since then, their father was in possession. Later, she executed an unregistered sale deed dt.7.6.1958. After the death of their father, the petitioners are in possession of the land. While so, the respondents 4 & 5 filed an application before the second respondent claiming occupancy certificate under Sections 4 to 8 of A.P. Telangana Area Abolition of Inams Act 1955 on the ground that the original inamdar has mortgaged the property to their father. The petitioners also filed independent claim petition for grant of occupancy certificate. At the same time, the third respondent, who happened to be the grand son of the original inamdar, has also filed an application before the second respondent for grant of occupancy certificate. The second respondent passed the order dt.18-7-1990 for grant of occupancy certificate in favour of the third respondent alone. Against the said orders, the petitioners filed a statutory appeal before the first respondent. The first respondent has dismissed the appeal through the impugned order dt.31.1.1994 holding that the respondents 3,4 & 5 are eligible for the grant of occupancy certificate and further stated that they are in possession on the crucial date of vesting i.e.20.7.1955 and on 1.11.1973. It is further stated that in view of the impugned orders, the respondents 3 to 5 are trying to obtain a lay out for dividing the land in to

plots and trying to change the physical features of the property. Hence, the writ petition.

It has been contended by the learned counsel for the parties that the primary authority has allowed the claim of the 3rd respondent, who happened to be the grand son of the original inamdar, for grant of occupancy certificate in respect of the land in question, while refusing the case of the petitioners for grant of the same based on the mortgage Ex.B3 dt. 7-12-1959. Aggrieved by the said grant, the writ petitioners preferred an appeal before the Joint Collector, who dismissed the appeal holding that respondents 4 & 5 are in continuous possession of the land and has chosen to grant the certificate in their favour. Aggrieved by the same, the present writ petition has been filed.

It is the case of the respondents 4 & 5 that the petitioners herein were never in possession of the land and the land was vested with the government on 20-7-1955 and the alleged private sale deed dt. 7-6-1958 is illegal. As rightly observed by the Court below, as on the crucial dates of vesting i.e., 20-7-1955, and on 1-11-1973 the 3rd respondent and themselves were in possession of the land in question by way of cultivation. It is their further case that from 1959 their father was in possession of the land up to 1969 and after his demise the respondents 4 & 5 were in possession of the inam land by cultivation. Hence, they are entitled for grant of occupancy certificate and the writ petition has to be dismissed.

It has been argued by the learned counsel for the petitioners that the petitioners are in continuous possession of the land by virtue of the mortgage deed dt. 1-7-1954 and also through an unregistered sale dt. 7-6-1958. The counsel further argued that the primary authority has held that the petitioners are in possession and respondents4 & 5 are never in possession of the land and they are claiming the land by virtue of sale deed dated dt.7-12-1959 which is very much later to the mortgage dt. 1.7.1954 in favour of their father, which is marked as Ex.B3.

It has been further argued by the learned counsel for the petitioners that respondents 4 & 5 have never filed any appeal aggrieved by the orders passed by the primary authority and in the appeal filed by the present writ petitioners, the appellate authority instead of deciding the issue, has chosen to order for issuance of the occupancy certificate to the respondents 4 & 5 which is clearly illegal and irregular.

Learned counsel appearing on behalf of respondents 4 & 5 strenuously contended that the respondents 4 & 5 are in continuous possession of the land as per the Pahanis. But however the primary authority without taking into consideration of the possession has sought to grant the certificate to the grand son of the inamdar who happened to be the 3rd respondent in the present writ. It has been further argued by the learned counsel relying on the observations of the Joint Collector -the appellate authority that the respondents 4 & 5 are in possession and they have not applied for the mutation of their names and hence the impugned order require no interference.

The fact remains that the primary authority has observed that the name of the petitioner's father has been shown as pattedar and there is no categorical finding as such by the primary authority that the respondents 4 & 5 are in possession of the land. In the absence of any appeal by the respondents 4 & 5 against the findings of the primary authority dated 18-7-1980, the only question remains is whether the petitioners herein are entitled for any relief sought in the appeal. But, however, in the absence of any appeal preferred by the aggrieved party it has to be held that the Joint Collector has committed illegality and irregularity in holding that the respondents 3 to 5 are entitled for grant of the occupancy certificate.

In view of the above, it has to be held that the order of the Joint Collector is liable to be set aside and accordingly set aside and it is a fit case to remit the matter back to the first respondent for considering the matter afresh on the basis of the material on record and after affording opportunity to all the parties and to pass appropriate orders within a period of three months from the date of receipt of a copy of this order.

Subject to the above observation, the writ petition is allowed while setting aside the order impugned and the matter is remitted to the Joint Collector for fresh consideration. No costs.

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T. MEENA KUMARI, J

Dt. 28/4/2005

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HON'BLE SMT JUSTICE T.MEENA KUMARI

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WRIT PETITION NO : 20316 of 1995

28th April 2004

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this Thursday the twenty eighth day of April Two thousand and Five.

Asst. Registrar

To

1. The Joint Collector, Rangareddy District, Hyderabad.
2. The Revenue Divisional Officer, Chevella Division,
   Rangareddy District at Domalguda Hyderabad.
3. Two CCs to GP for Revenue, High Court Buildings,

   HYDERABAD (OUT)

4 Two CD copies.